

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link-Up Reform and)	WT Docket No. 11-42
Modernization)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Connect America Fund)	WC Docket No. 10-90

**COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

I. INTRODUCTION AND SUMMARY

The National Tribal Telecommunications Association (NTTA) provides these comments in response to the Federal Communications Commission's (FCC) Second Further Notice of Proposed Rulemaking addressing the federal Lifeline Program.¹

NTTA consists of Tribally-owned communications companies including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O'odham Utility Authority, and Warm Springs Telecom. NTTA's mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide

¹ *In the Matter of Lifeline and Link-Up Reform and Modernization*, et al., WC Docket No. 11-42, et al., Second Further Notice of Proposed Rulemaking (FCC 15-71), released June 22, 2015 (FNPRM)

guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

The case has been made – broadband service is to be offered to Federal Lifeline program-eligible subscribers as part of long term universal service fund reforms. The question now is how broadband service to low-income Americans, including most especially Native Americans, will be made available and affordable for everyone. The Commission adopted a policy fifteen years ago where low-income consumers living on Tribal lands, and who qualify for the federal Lifeline program, will receive an “enhanced” credit for their service. In the interim, the Commission has made numerous changes to the federal Lifeline program, and in the name of eliminating waste, fraud, and abuse, has in essence overhauled the program. However, one thing has remained essentially untouched – the idea behind offering Lifeline customers living on Tribal lands an additional credit in recognition of the differing and more challenging economic environment facing many Native Americans. NTTA applauds the Commission in this regard, but counsels that much more work is to be done before the digital divide that exists between many parts of Tribal America and the rest of the country can start to be filled. In these comments, NTTA will discuss ways the Commission can better ensure the affordability of broadband services for low-income consumers living in Tribal areas: the Commission must (1) continue, and perhaps further enhance, the Tribal Lifeline credit, (2) consider increasing the Tribal Lifeline credit in light of broadband services being made available to Lifeline customers, (3) ensure Tribal engagement is happening in all current and future, state and federal, ETC designation processes, (4) maintain the current Lifeline customer verification process for use in Tribal areas and not implement the third party verification system, and (5) increase the Lifeline income criteria eligibility threshold from 135% to 150% of the Federal Poverty Guidelines.

By virtue of serving some of the highest cost, lowest density areas of the country, coupled with historically depressed economies, NTTA member companies serve customer bases that are highly dependent upon the federal Lifeline program for vital communications services. In a sample of recent NTTA member statistics, over 50% of NTTA member residential customers are Lifeline participants, with the high end of the range being around 90%. This demonstrates the importance of the Lifeline program in Tribal areas and how it can assist in ensuring low-income

customers have a chance to connect to the outside world. In addition, the average Lifeline credit provided to NTTA member customers is approximately \$21, meaning the qualifying low-income consumers are saving that amount on monthly communications services and that can be spent on other necessities. The bottom line is the areas served by NTTA member companies are very dependent upon the federal Lifeline program as a means to become and remain connected, all in furtherance of the Commission's Lifeline goals.

While NTTA supports the Commission's efforts to curb waste, fraud, and abuse in the Lifeline program, caution must be taken to ensure the program's funding is and remains adequate. The Commission claims \$2.75 billion in Lifeline program savings during 2012-2014 due to the reforms that began in 2012.² NTTA requests that the Commission ensures the reforms that resulted in multi-billion dollar savings and any future reforms do not go too far and are not accomplished on the backs of the poor and low-income beneficiaries of the Lifeline program.

II. TRIBAL LIFELINE CREDIT MUST BE MAINTAINED

One of the issues on which comment is sought is whether current levels of federal Lifeline credits should be maintained³, and more specifically for the Tribal Lifeline credit amount, whether such amounts properly incent infrastructure deployment.⁴ The Tribal Lifeline credit, first adopted in 2000 and upheld/enhanced in 2012, has played a key role in increasing voice service affordability and penetration levels.⁵ It should be intuitive that providing up to \$34.25 in credits for local service to some of the lowest income people in historically economically-disadvantaged areas of the country will help such customers take and utilize vital communications services.⁶ Indeed, this is the experience of many NTTA members as they continue to serve Native Americans living on Tribal lands – the Tribal Lifeline credit is indispensable in providing many Native Americans a chance to connect to the global communications network. Thus, NTTA recommends the Commission, at the very least, maintain the current Tribal Lifeline credit amount.

² *FNPRM* at 3

³ *Id.*, at 52-54

⁴ *Id.*, at 158

⁵ See *e.g.*, Office of Native Affairs and Policy 2012 Annual Report at 32

⁶ For many of NTTA members' customers, the actual Tribal Lifeline credit is less, due to local rate levels.

Second, NTTA suggests the correlation attempting to be made between the level of Lifeline credit and infrastructure deployment, regardless of statements made by the Commission in the past, simply does not exist for NTTA members. It is the federal, and in some instances state, universal service programs that have been and are responsible for investment in infrastructure; that is, the availability side of the universal service equation. Federal and state Lifeline programs, in general, are involved with the *affordability* side of the equation. Both programs are vital in Tribal areas, but there is very little policy implementation overlap between the two. Therefore, NTTA recommends the Commission terminate this part of the Lifeline program reform process, and instead focus on how to update the program to recognize the absolute need for broadband services in Tribal areas and the higher rates related to broadband services.

Third, the Commission asks how enhanced Lifeline support is “utilized by carriers and how does it benefit consumers on Tribal lands?”⁷ The first part of this question – how Lifeline support is used by carriers – is essentially straightforward as it relates to NTTA members: the Lifeline credit is simply passed through to the low-income consumer as an offset to the overall cost of local service. Instead, it is the Commission’s high cost support programs (HCLS, ICLS, CAF ICC) that NTTA’s members use to invest in the infrastructure needed to provide voice and broadband service in Tribal areas. As the Commission knows, the cost of local service in high cost rural areas served by rural LECs is rarely, if ever, covered by the basic local rate. This federal and state policy was adopted to keep local rates affordable and reasonably comparable to rates charged for similar services in lower cost, urban areas. Lifeline credits simply allow more low-income consumers to connect to NTTA members’ networks and thus enable the connection to the rest of the world that may not be otherwise available.

Finally, NTTA agrees with the Commission’s proposal to “limit enhanced Tribal Lifeline and Link Up support only to those Lifeline providers who have facilities.”⁸ NTTA members, due to their status as ILECs, carriers of last resort, or facilities-based carriers, are obligated to invest in the infrastructure necessary to provide voice and broadband services to Tribal lands. Non

⁷ FNPRM at 163

⁸ *Id.*, at 167

facilities-based Lifeline only ETCs are under no such obligation, and as a result do not add or contribute to the overall wellbeing of Tribal areas. As a result, NTTA recommends that Tribal Lifeline and Link Up support only be available to those carriers, such as all NTTA members, that actually make infrastructure investments in Tribal areas that will serve to accomplish the Commission's goals of universal, affordable voice and broadband services.

III. THE LIFELINE CREDIT

In the 2012 Lifeline Reform Order, the Commission established the goal for Lifeline related to broadband service – to ensure availability of broadband service for low-income Americans.⁹ A big part of the FCC's arsenal in the Lifeline program is the Lifeline credit applied to qualifying customers' service bills. As of now, the non-Tribal Lifeline credit is \$9.25 and the maximum Tribal Lifeline credit is \$34.25. As explained further below, these credit amounts are based on pure voice service considerations and predate the Commission's determination that broadband services should be supported via the Lifeline program.

A. The Current Lifeline Credit Does Not Cover Broadband Services

Historically, the federal Lifeline credit was tied to the residential subscriber line charge, currently capped at \$6.50, with two additional support "tiers" to bring the maximum Lifeline credit to \$10.00 for non-Tribal customers.¹⁰ Providing the full credits related to Tiers one through three are contingent upon actions by individual states and carriers, so the average non-Tribal Lifeline credit in September 2011 was \$9.25.¹¹ Based on this, the FCC decided to establish \$9.25 as the uniform Lifeline credit to be applied to all non-Tribal Lifeline customers' bills.¹²

The Tribal Lifeline credit, first established in 2000, was adopted to address "the significantly lower-than-average incomes and subscribership levels of members of federally-

⁹ *In the Matter of Lifeline and Link-Up Reforms and Modernization*, etc., Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42, et. al., rel. February 6, 2012 (FCC 12-11) at 33 (*Lifeline Reform Order*)

¹⁰ *Id.*, at 53

¹¹ *Id.*

¹² *Id.*, at 58

recognized Indian tribes”¹³ by reducing “the monthly cost of telecommunications services for qualifying low-income individuals on tribal lands, so as to encourage those without service to initiate service and better enable those currently subscribed to maintain service.”¹⁴ At that time, the Commission established the “Enhanced” Tribal Lifeline credit at \$25 and determined that each qualifying consumer should pay an effective local rate of at least \$1.¹⁵ Subsequently, the Commission did away with the \$1 minimum local rate requirement but maintained the \$25 Tribal Lifeline credit, thus making the maximum Tribal Lifeline credit \$34.25 (\$25 + \$9.25).¹⁶

The Commission has proposed to maintain the non-Tribal Lifeline credit amount¹⁷ and requests further comment as to the current Tribal Lifeline credit amount.¹⁸ It is clear and undeniable that the current Lifeline credit amounts are based on affordability concerns related to voice services only. The \$9.25 non-Tribal credit amount is based on support tiers established years before the Commission’s 2012 determination to add broadband service to the mix. The Tribal credit of \$25 was established in 2000 – at a time when broadband was in its infancy and was not yet part of universal service in the United States. In what can be described as a fundamental change, the FCC proposes to adopt minimum service standards for broadband in relation to the Lifeline program. With this, however, the FCC devotes little space in discussing the implications of this major change on the Lifeline credit levels.¹⁹ NTTA recommends the Commission seriously consider, or perhaps eradicate, the problem of adding broadband services to the Lifeline program without increasing the Lifeline credit.

B. The Commission Should Consider Increasing the Lifeline Credit

For Tribal areas, the additional \$25 Lifeline credit without a doubt serves to increase the ability of consumers to subscribe to and maintain communications services. As stated in the

¹³ *In the Matter of Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking (FCC 00-208), CC Docket No. 96-45, rel. June 30, 2000 (*Tribal Lifeline Order*) at 28

¹⁴ *Id.*, at 44

¹⁵ *Id.*, at 46

¹⁶ *Lifeline Reform Order* at 59

¹⁷ *FNPRM* at 52

¹⁸ *Id.*, at 163

¹⁹ *Id.*, at 52-54

FNPRM, “for many Tribally-owned ETCs, for example, the names Lifeline and Link Up resonate strongly, given the very high levels of unemployment in Tribal lands, the very high percentage of Tribal families with incomes well under the Federal Poverty Guidelines, and the remote nature of Tribal Reservations.”²⁰ In addition, the Commission references NTTA member Hopi Telecommunications, Inc.’s (HTI) experience with the Lifeline program, stating the Lifeline and Link Up programs “have been vital assets as HTI has expanded the reach and adoption of communications services across the Hopi Reservation.”²¹ However, as stated above, the current Lifeline credits were established considering only the support of voice services. If a low income consumer wishes to subscribe to broadband service, the additional charge can be, and often is, a fatal impediment. Unfortunately, the Commission does not provide any proposals to address this problem.

One of the lessons of the Broadband Lifeline Pilot program is that affordability is a key component to low income consumers’ decisions relating to whether or not to subscribe to broadband service.²² While low income consumers in Tribal areas seem to recognize the inherent value of broadband services, the prices thereof present barriers to subscribership. Thus, in order for the United States to meet the Commission’s broadband goals for the Lifeline program, affordability must be effectively addressed. The one way open for the Commission to do this is the Lifeline credit. However, the current Lifeline credits, both Tribal and non-Tribal, having been established prior to broadband becoming a part of universal service and the Lifeline program, must obviously increase. The current Tribal Lifeline credit, a maximum of \$34.25, results in an effective local *voice* service rate of zero.²³ It does not, however, address the additional charges that will be necessary for low-income consumers to afford broadband service.

It is clear that adding broadband services to the Lifeline program will result in higher costs charged to low-income consumers, and thus will necessitate an increase to the Lifeline credit. For example, the current funding benchmark utilized in the CAF Phase II cost model process is \$52.50. In essence, this amount represents the rate consumers can be expected to pay for local

²⁰ *Id.*, at 162

²¹ *Id.*

²² See e.g., Wireline Competition Bureau’s *Low-Income Broadband Pilot Program Staff Report*, WC Docket No. 11-42, rel. May 22, 2015 at 2

²³ *Lifeline Reform Order* at 270

and broadband services before a given location is considered to be in a high cost area.²⁴ This amount is in turn based on an average revenue per user (ARPU) of \$75, which represents the average revenue a carrier can expect to receive from customers for providing voice and broadband services.²⁵ While the \$75 ARPU cannot be seen as an *affordable* rate for voice and broadband services, it does demonstrate that the addition of broadband service means an incremental cost to consumers. In fact, the Omnibus Broadband Initiative quantified this difference: an ARPU of fixed voice service of \$33.50 and an ARPU for fixed broadband service of \$36 to \$44.²⁶ Given these facts, it is clear that maintaining the current Tribal Lifeline credit while at the same time adding broadband service into the mix is not reasonable.

Besides the fact that the current Tribal and non-Tribal Lifeline credits do not include any consideration of broadband services, the Commission has adopted a rule that has had the overall effect of increasing basic local rates.²⁷ This rule, otherwise known as the local rate floor rule, requires that local rates (plus certain regulated fees) be above a certain level or the high cost recipient will lose support. The most recent rate floor for voice services is \$21.22, and represents an increase over the 2014 rate floor of \$20.46.²⁸ While the Commission delayed the implementation of the local rate floor, the fact remains that the local rate data used to determine the rate floor shows an increase every year. In recognition of the above discussion regarding the addition of broadband services to the Lifeline program, this fact also points towards the need for a higher Lifeline credit amount.

NTTA recommends the Commission increase the Tribal Lifeline credit amount to recognize the above facts regarding broadband services and the overall increase in basic local rates. Of course, the Lifeline credit will need to be bifurcated as not all current or prospective Lifeline customers will choose to subscribe to broadband services. As of now, the reasonably

²⁴ *In the Matter of Connect America Fund*, WC Docket No. 10-90, Report and Order (DA 14-534) rel. April 22, 2014 (CAF Inputs Order) at 180

²⁵ *Id.*, at 172

²⁶ Omnibus Broadband Initiative (OBI) Technical Paper “Broadband Availability Gap” at 50

²⁷ 47 CFR § 54.318, the local rate floor rule

²⁸ *Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services and Posting of Survey Data and Explanatory Notes*, Public Notice (DA 15-470), WC Docket No. 10-90, rel. April 16, 2015

comparable broadband rate for 10 mbps/1 mbps speeds and 100 GB usage allowance is \$71.40.²⁹ Furthermore, the reasonably comparable rate for voice services is \$47.48, meaning the Tribal Lifeline program supports approximately 72% of what the FCC considers the maximum level a local service rate can reach before being considered not-reasonably comparable. Applying this same subsidy amount to the reasonably comparable broadband rate results in a putative Tribal broadband Lifeline credit of \$51.40, for a total Tribal Lifeline credit for those customers choosing to subscribe to broadband services of \$85.65. NTTA suggests the proper amount is somewhere in between the current \$34.25 and, for example, the \$85.65 described above. However, the issue is clear – the Tribal Lifeline credit must be increased to recognize the addition of broadband services to the program.

IV. ETC DESIGNATION

In the FNPRM, the Commission makes a number of proposals regarding the designation of Eligible Telecommunications Carriers (ETCs) in relation to the federal Lifeline program.³⁰ Overall, according to the Commission, these proposals will streamline the designation process. NTTA recommends for ETC designation processes that affect Tribal lands, the FCC recognize the key role that Tribal governments play, and must continue to play, in making sure ETCs are designated via a thorough and Tribal-specific process. This can only happen if the FCC continues to recognize the sovereignty of Tribal governments, and strengthen, rather than “streamline”, the ETC designation process by requiring all prospective Lifeline ETCs to request authorization from the relevant Tribal authority.

The Commission’s Tribal Engagement rule³¹ and Tribal Policy Statement³² may prove instructive in regards to the issue of ETC designation in Tribal areas. Among the principles contained in the Tribal Policy Statement, the Commission sets forth that it “in accordance with

²⁹ *Id.*

³⁰ FNPRM at 122-141

³¹ 47 CFR § 54.313(a)(9); see also *Office of Native Affairs and Policy, etc., Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, Public Notice (DA 12-1165), WC Docket No. 10-90, et. al., rel. July 19, 2012 (*Further Guidance*)

³² *In the Matter of Statement of Policy on Establishing A Government-to-Government Relationship with Indian Tribes*, Policy Statement (FCC 00-207) rel. June 23, 2000. (*Tribal Policy Statement*)

the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources."³³ As recognized, Tribal governments have an inherent and basic interest in ensuring the well-being of their citizens, and the Commission has committed to working with Tribal governments on peer-to-peer basis. It is clear, then, that Tribal governments have a vital interest in determining which carriers are given the responsibility for ensuring the most vulnerable of their citizens are provided access to quality communications services. Taken a step further, the Tribal Engagement rule contains a fairly comprehensive list of the reasons that prospective ETCs should be required to first obtain authorization from the relevant Tribal authority prior to providing any service on Tribal lands. The Tribal Engagement rule requires that ETCs, on an annual basis, certify compliance with the following:

- (1) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;
- (2) Feasibility and sustainability planning;
- (3) Marketing services in a culturally sensitive manner;
- (4) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
- (5) Compliance with Tribal business and licensing requirements. Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

It is clear that in addition to annual compliance for ETCs serving Tribal areas, under these same principles, any ETC *proposing* to provide Lifeline service in Tribal areas must first seek

³³ *Id.*, at p. 4

permission from the Tribal authority. To do otherwise would only serve to minimalize the Tribal Engagement rule at the outset.

V. THIRD PARTY VERIFICATION

The Commission proposes to “remove the responsibility of conducting the eligibility determination from the Lifeline providers” by establishing a third party verification system.³⁴ NTTA understands and appreciates the problem the Commission is attempting to solve with the third party verification (TPV) system, but is concerned that such a system will not work in Tribal areas. Because of this, NTTA opposes the TPV proposal.

The proposed TPV system presents major problems in Tribal areas for two main reasons. First, Lifeline requirements in many, if not all, Tribal area require a large degree of subjectivity to effectively administer. For example, the FCC’s one per household rule was modified to recognize the realities of living in Tribal areas.³⁵ In order to effectively enforce this rule, the verifying entity should be located in the area, as a certain degree of local knowledge is invaluable. In addition, Tribally-owned carriers, such as those represented by NTTA, by virtue of being a part of and located in the Tribal community, have a level of trust with potential Lifeline customers that any TPV would find difficult, if not impossible, to build. Secondly, NTTA firmly believes that any change to Lifeline customer verification procedures must recognize Tribal government sovereignty and the need for Tribal engagement. Establishing a TPV in Tribal areas would severely weaken the ability of Tribal governments to effectively advocate for their citizens.

Given the above discussion, NTTA questions whether the Commission’s TPV proposal will do anything in Tribal areas to curb waste, fraud, and abuse in the Lifeline program. As a result, NTTA recommends the FCC not adopt the TPV system in Tribal areas.

³⁴ *FNPRM* at 63

³⁵ 47 CFR § 54.409(b)

VI. INCOME ELIGIBILITY

NTTA recommends the Commission consider an increase in the federal Lifeline program income eligibility threshold from 135% of the Federal Poverty Guidelines to 150%. This change would have a positive effect on the ability of Native Americans living in Tribal areas to qualify for the Lifeline program and thus take advantage of everything modern communications services have to offer.

CONCLUSION

NTTA continues to support the Commission's efforts to make the Lifeline program more effective and eliminate waste, fraud and abuse. Specifically, NTTA agrees with the Commission's determination to include broadband services in the Lifeline program; however, NTTA suggests the Commission consider increasing the Lifeline credit to recognize the additional costs that Lifeline customers will realize when they subscribe to broadband services. In addition, NTTA recommends the FCC include Tribal governments in the ETC designation process, that the FCC not adopt a third party verification system for Lifeline customers in Tribal areas, and that the income eligibility criteria threshold be increased to 150% of the Federal Poverty Guidelines for customers living on Tribal lands.

Respectfully Submitted,

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